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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Announcement of Test Providing Centralized Decision-making Authority for Four CBP Centers of Excellence and Expertise

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a general test to further develop the Centers of Excellence and Expertise (CEEs) to facilitate the entry of merchandise imported by companies within certain industries. This document involves testing how the following four CEEs will operate with broad decision-making authority: the Electronics CEE; Pharmaceuticals, Health & Chemicals CEE; the Automotive & Aerospace CEE; and the Petroleum, Natural Gas & Minerals CEE. This notice invites public comment concerning the methodology of the test program, identifies the purpose of the test and the regulations that will be affected, determines the length of the test, explains the application process, and provides the eligibility and selection criteria for voluntary participation in the test. This document also provides the legal authority for the test and explains the repercussions and appeals process for misconduct under the test.

DATES: Applications for participation in the test may be submitted beginning [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. The selection of initial test participants will begin no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Applications will be accepted

throughout the duration of this test. Selected applicants will be individually notified of their participation date.

ADDRESSES: To submit comments concerning this test program: send an email to CEE@cbp.dhs.gov. In the subject line of an email, please use, “Comment on CEE test.”

To apply to participate: submit a letter to U.S. Customs and Border Protection, Office of Field Operations, Trade Operations Division, 1300 Pennsylvania Ave., NW, Suite 2.3D, Washington, DC 20229, or an email to CEE@cbp.dhs.gov. The letter or email must include the name and contact information for the business interested in participating in the test, the business’s industry, and the business’s importer of record (IOR) number(s).

FOR FURTHER INFORMATION CONTACT: Lori Whitehurst, Program Manager, Office of Field Operations, at (202) 344-2536; or Thomas Overacker, Project Coordinator, Office of International Trade at (859) 331-9020 ext. 137.

SUPPLEMENTARY INFORMATION:

Background

In October 2011, U.S. Customs and Border Protection (CBP) established two Centers of Excellence and Expertise (CEEs): the Electronics CEE in Long Beach, California and the Pharmaceuticals CEE in New York City, New York. Since their initiation in October 2011, the CEEs have been staffed with CBP employees who facilitate trade by providing account management for Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) members in the identified industries, and engaging in risk segmentation and trade outreach. The CEEs have the ability to review entries and the CEE Directors, who are tasked with leading the CEEs, may make entry processing recommendations to the Port Directors concerning

pharmaceutical and electronics entries. The Electronics CEE specializes in merchandise related to information technology, integrated circuits, automated data processing equipment, and consumer electronics. The Pharmaceuticals CEE will now be called the Pharmaceuticals, Health & Chemicals CEE, and will specialize in merchandise related to pharmaceuticals, health-related equipment, and products of the chemical and allied industries.

On May 10, 2012, the Acting Commissioner of CBP announced at the West Coast Trade Symposium two new CEEs: the Automotive & Aerospace CEE in Detroit, Michigan, and the Petroleum, Natural Gas & Minerals CEE in Houston, Texas. The Automotive & Aerospace CEE will specialize in merchandise related to the automotive, aerospace, or other transportation equipment and related parts industries. The Petroleum, Natural Gas & Minerals CEE will specialize in merchandise related to the petroleum, natural gas, petroleum related, minerals, or mining industries.

This document announces a general test to provide broad decision-making authority to the: Electronics CEE; Pharmaceuticals, Health & Chemicals CEE; Automotive & Aerospace CEE; and Petroleum, Natural Gas & Minerals CEE. Specifically, the test waives certain regulations to the extent that they provide Port Directors with the authority to make certain decisions. Those regulations are waived only to the extent to allow the CEE Directors for the four identified CEEs to make those decisions.

This document identifies the purpose of the test and the regulations that will be affected, determines the length of the test, explains the application process, and provides the eligibility and selection criteria for voluntary participation in the test. This document

also provides the legal authority for the test and explains the repercussions and appeals process for misconduct under the test.

Purpose of the test and suspension of certain regulations

CBP's goal is to incrementally transition the operational trade functions that traditionally reside with the ports of entry until they reside entirely with the CEEs. By focusing on industry-specific issues and providing tailored support for the participating importers, CBP is seeking to facilitate trade, to reduce transaction costs, increase compliance with applicable import laws, and to achieve uniformity of treatment at the ports of entry for the identified industries. CBP believes that providing broad decision-making authority to the CEEs for entry processing issues will better enable the CEEs to achieve these goals for CBP and the trade.

Currently, pursuant to the CBP regulations in title 19 of the Code of Federal Regulations (19 CFR), Port Directors have the authority to make decisions regarding products imported into the ports. For this test, regulations in the following sections of title 19 of the CFR (19 CFR) providing Port Directors with certain decision-making authority will be waived only to the extent to provide the CEE Directors with the authority to make those decisions: §§ 10.1, 10.8, 10.9, 10.21, 10.24, 10.66, 10.67, 10.84, 10.91, 10.102, 10.134, 10.172 – 10.175, 10.177, Subparts B – K, M, N, and P of Part 10, §§ 12.3, 12.73(j) and (k), 12.80, 12.121(a)(2)(ii); Part 113; §§ 134.3, 134.25, 134.26, 134.34, 134.51, 134.52, 134.53, 134.54(a)¹, 141.20, 141.35, 141.38, 141.44, 141.45,

¹ Please note that 19 CFR 134.54(a) will be waived only to the extent to provide the CEE Directors with the authority to extend the number of days from the date of the notice of redelivery for the importer to properly mark or redeliver all merchandise previously released to him. The Port Director will continue to

141.46, 141.57, 141.58, 141.88, 141.91, 141.92, 141.113, 142.13, 144.12, 144.34(a), 144.38, 144.41, 146.63, 151.11, 152.2, 152.13, 152.101, 159.7, 159.12, 159.58, 162.79b, 163.7, 173.1, 173.2, 173.4, 173.4a, 174.12, 174.15, 174.16, 174.21, 174.22, 174.23, 174.24, 174.26, 174.27, 174.29, 174.30, 181.12, 181.13, 181.22, 181.23, 181.32, 181.33, 181.64, 181.112, 181.113, 181.114, 181.115, 181.116, 181.121, and 191.61.

When test participants file an entry in a port, the required entry documents will be routed to the CEE assigned to that importer and certain revenue-related functions, including but not limited to those indicated below, will be performed by the applicable CEE Director instead of the Port Director:

- determinations, notifications, and processing concerning duty refund claims based on 19 U.S.C. 1520(d) (see 19 CFR 10.441, 10.442, 10.591, 10.592, 181.33, 10.870, and 10.871);
- requests for computed value information (see 19 CFR 141.88);
- waivers of invoice requirements (see 19 CFR 141.92);
- determinations concerning the time of submission for all entry summaries and estimated duties (see 19 CFR 142.13);
- issuances of all Requests for Information (CBP Form 28) (see 19 CFR 151.11);
- issuances of all Notices of Action (CBP Form 29) (see 19 CFR 152.2);
- notifications and processing concerning any commingling of merchandise (see 19 CFR 152.13);

retain the authority for demanding liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered.

- processing of requests for application of the computed value method (see 19 CFR 152.101);
- extensions and suspensions of liquidations (see 19 CFR 159.12);
- reviewing and correcting for errors in transactions (see 19 CFR 173.1); and
- reviewing and acting on protests (see 19 CFR 173.2, 174.21, and 174.29).

For this test, § 162.74(e)(1) is also waived insofar as test participants will be required to file any prior disclosures with their designated CEE rather than at the port of entry.

CEE Determinations Not Requiring Regulatory Suspension

The following determinations do not require the waiver of regulations, but are determinations that would usually otherwise be made by the Port Directors, and will be made by the CEE Directors under this test: performing all validation activities; reviewing and processing of post entry amendments and post summary corrections; and fixing the final appraisal of merchandise, and fixing the classification and duty rate of such merchandise.

Processes That Will Change For Selected Test Participants

The following is a list of processes that will change for test participants effective upon the beginning of this test:

- requests for entry cancellations must be submitted electronically to the CEE;

- Census resolution processes will be handled by the CEE, therefore, rejected ACS entry summaries must be electronically transmitted to the CEE's email address, unless other arrangements have been made with the CEE to resolve Census issues;
- timely responses to Requests for Information (CBP Form 28) and Notices of Action (CBP Form 29) must be sent directly to the CEE;
- requests for Internal Advice must be submitted electronically to the CEE for further coordination with the Office of International Trade, Regulations and Rulings; and
- protests must be filed via the electronic protest module in ACS (including a note in the filing that designates the CEE team), or, submitted electronically on a scanned copy of the CBP Form 19 with all supporting documents to the CEE via the ACE Portal or the CEE's email address.

Processes That Will Remain Unchanged For Selected Test Participants

Unless specified in this document or in the "Centers of Excellence and Expertise Test Guidelines" (CEE Test Guidelines), which will be posted on the web at http://www.cbp.gov/xp/cgov/trade/trade_transformation/industry_int/, all current processes will remain unchanged. For example, the following processes will remain unchanged:

- quota entry summaries will continue to be processed by the ports of entry;
- the bulletin notice of liquidation (CBP Form 4333) will continue to be posted at the ports of entry;

- revenue collection and the resolution of discrepancies in the amount of monies presented will remain with the ports of entry;
- requests for further review and requests to void the denial of the protests will continue to be issued by Regulations and Rulings, Office of International Trade;
- entry filers must continue to file Electronic Invoice Program (EIP) and Remote Location Filing (RLF) entry summaries as usual in the Automated Commercial Environment (ACE); and
- entry filers must continue to submit entry summaries through the Automated Commercial System (ACS) or ACE and will not be required to change the respective port of entry.

CEE Test Guidelines and Scope of the CEEs' Broad Decision-Making Authority

All of the regulations cited above that require waiving to provide the CEE Directors with authority to make decisions that are otherwise designated for the Port Director will be waived at the start of the test, with the exception of §§ 159.7 and 191.61, which will be waived on a date that will be indicated in the CEE Test Guidelines. CBP will be posting the CEE Test Guidelines on the web to provide information regarding CEE operations. Test participants must check the CEE Test Guidelines on a weekly basis to determine: (1) how their responsibilities and required processes will differ from non-CEE participants and the effective date of the new responsibility or required processes; (2) whether the new responsibilities and required processes are being changed again and the effective date of the change; (3) whether there will be a change to any procedure that

is required by CBP in a manner otherwise than by regulation, e.g., reconciliation test notice; and (4) when §§ 159.7 and 191.61 will be waived.

All changes to procedures during the test will be posted in the CEE Test Guidelines two weeks before the change goes into effect.

The broad decision-making authority provided to the CEEs and the new processes for entry filers will apply only to participants in the test. Port Directors will continue to make these decisions for all other importers. Decisions made by a CEE which are within the authority granted under this test shall govern the transactions to which they pertain; test participants may not seek to have such decisions referred to a Port Director or another CEE Director. For efficiency and trade facilitation, all consumption entries filed before and during participation in the test, except for antidumping and countervailing duty entries, will be processed by the designated CEE, regardless of the commodity listed on the entry line. These entries will continue to be processed by the CEE, even if the test participant voluntarily withdraws from the test. Similarly, regardless of whether a protestable decision was made by a Port Director or a CEE Director, any protests filed after participation in the test commences will be processed and decided upon by the CEE Director. The processing and decision-making authority for these protests will remain with the CEE Director, even if the test participant voluntarily withdraws from the test.

Timeline for Test

This test is intended to last three years from [INSERT DATE 45 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. At the conclusion

of the test, an evaluation will be conducted to assess the effect that providing CEEs with broad decision-making authority has on improving trade facilitation, lowering transaction costs for importers, and ensuring importers' compliance with applicable import laws and CBP uniformity of actions. CBP plans to publish a notice when the test closes.

Application Process

Importers of the products defined in the "Eligibility Criteria for Voluntary Participation" section of the document, that meet the eligibility criteria indicated in that section, and wish to participate must submit a letter to U.S. Customs and Border Protection, Office of Field Operations, Trade Operations Division, 1300 Pennsylvania Ave., NW, Suite 2.3D, Washington, DC 20229, or an email to CEE@cbp.dhs.gov. The letter or email must include the name and contact information for the business interested in participating in the test, the business's industry, and the business's importer of record (IOR) number(s). Only businesses that meet the eligibility criteria provided in this document are invited to apply for participation. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified and given the opportunity to resubmit. CBP may contact applicants with regard to any additional information that may be needed.

Test participants will be required to update their designated CEE with any added IOR numbers during the course of the test.

All C-TPAT and ISA members currently participating in the existing CEEs will also need to apply for the test if they wish to participate in this test.

Additional participants may join throughout the duration of the test by following the procedures above.

Eligibility Criteria for Voluntary Participants

For inclusion in the Electronics CEE, applicants must be part of the electronics industry, with the highest percentage of their entries comprised of related merchandise. For the purposes of this test “electronics” includes merchandise classified under headings 3818, 8471, 8473, 8501 through 8504, 8517 through 8538, and 8540 through 8548 of the Harmonized Tariff Schedule of the United States (HTSUS).

For inclusion in the Pharmaceuticals, Health & Chemicals CEE, applicants must be part of the pharmaceuticals, health, or chemical and allied industries, with the highest percentage of their entries comprised of related merchandise. For purposes of this test, “pharmaceuticals” includes merchandise classified under headings 2936, 2937, 2939, 2941, 3001 through 3006, HTSUS. For purposes of this test, “health equipment” includes merchandise classified under headings 4014, 9018, 9019, 9021, 9022, and 9402, HTSUS. For purposes of this test, “chemicals” includes merchandise classified under headings 2801 through 2935, 2938, 2940, 2942, 3101 through 3302, 3402 through 3405, 3407 through 3604, 3606 through 3817, and 3819 through 3825, HTSUS.

For inclusion in the Automotive & Aerospace CEE, applicants must be part of the automotive, aerospace, or other transportation equipment and related parts industries, with the highest percentage of their entries comprised of related merchandise. For purposes of this test, “automotive” includes merchandise classified under headings 8701 through 8711, 8713, 8714, and 8716, HTSUS. For the purposes of this test, “aerospace” includes merchandise classified under headings 8801 through 8805, HTSUS. For the

purposes of the test “other transportation equipment and related parts” includes but is not limited to merchandise classified under headings 4011 through 4013, 8406 through 8412, 8512, 8601 through 8609, 8901 through 8908, HTSUS.

For inclusion in the Petroleum, Natural Gas & Minerals CEE, applicants must be part of the petroleum, natural gas, petroleum related, minerals, or mining industries, with the highest percentage of their entries comprised of related merchandise. For purposes of this test, “petroleum” and “natural gas” include merchandise classified under headings 2709 through 2713, HTSUS. For the purposes of this test, “petroleum related” includes merchandise classified under headings 2701, 2705, 2707, 2708, 2714, 2715 and 2716, HTSUS. For the purposes of this test, “minerals” or “mining” include merchandise classified under headings 2501 through 2621, 2702, 2703, 2704, and 2706, HTSUS.

Participants in any CEE must also have an ACE portal account.

Selection Criteria for Voluntary Participants

Importers that meet the criteria above may be selected for inclusion in the test. In the initial phase of the test priority consideration for participation will be given to importers enrolled in the C-TPAT Program as Tier 2 or Tier 3 members, and members of the Importer Self-Assessment (ISA) Program. CBP will notify the selected applicants in writing of their selection, their designated CEE, and the starting date of their participation. Selected participants may have different starting dates.

Legal Authority for General Testing

Section 101.9(a) of the CBP regulations (19 CFR 101.9(a)) allows CBP to conduct a test program or procedure to evaluate the effectiveness of operational procedures regarding the processing of passengers, vessels, or merchandise by imposing

requirements different from those specified in the CBP regulations but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. This test is established pursuant to 19 CFR 101.9(a) to test the effectiveness of new operational procedures. Revenue collection will continue to be handled electronically through the Automated Clearing House (ACH) and by the ports of entry and the test will not affect public health, safety, or law enforcement.

Misconduct under the Test

A CEE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or discontinuance from participation in this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations that have not been waived.
- Failure to deposit duties or fees in a timely manner.

If the CEE Director finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the CEE Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to U.S. Customs and Border Protection, Office of Field Operations, Cargo and Conveyance Security (CCS) Division, 1300 Pennsylvania Ave., NW, Suite 2.3D, Washington, DC 20229 or by email to CEE@cbp.dhs.gov. The Executive Director, Cargo and Conveyance Security, Office of Field Operations (OFO), CBP Headquarters,

will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's participation privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the CEE Director may immediately discontinue the test participant's participation privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the CEE Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to U.S. Customs and Border Protection, Office of Field Operations, CCS Division, 1300 Pennsylvania Ave., NW, Suite 2.3D, Washington, DC 20229 or by email to CEE@cbp.dhs.gov. The immediate discontinuance will remain in effect during

the appeal period. The Executive Director, Cargo and Conveyance Security, Office of Field Operations (OFO), CBP Headquarters, will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

Date: August 21, 2012

David V. Aguilar
Acting Commissioner
U.S. Customs and Border Protection

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